

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

VICTORIANO LOPEZ,

Plaintiff

v.

STATE OF NEVADA, et al.,

Defendants

Case No.: 3:17-cv-00732-RCJ-CSD

**Report & Recommendation of
United States Magistrate Judge**

Re: ECF Nos. 140, 142, 144

This Report and Recommendation is made to the Honorable Robert C. Jones, Senior United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Plaintiff, who is an inmate in the custody of the Nevada Department of Corrections (NDOC), is proceeding pro se with this action pursuant to 42 U.S.C. § 1983. (Am. Compl., ECF No. 78.) The court screened Plaintiff's amended complaint and allowed him to proceed with an Eighth Amendment deliberate indifference to serious medical needs claim related to alleged lack of treatment for painful dry, itchy eyes resulting from a stitch being left in his eye for four months after surgery, and for denial of recommended cataract surgery. The claim is proceeding against Dr. Kim Adamson, former NDOC Medical Director Dr. Romeo Aranas, and NDOC Medical Director Dr. Michael Minev (sued in his official capacity only as successor to Dr. Aranas for injunctive relief purposes).

Summary judgment was granted in Defendants' favor insofar as Plaintiff claimed he was denied treatment for his painful dry, itchy eyes. Defendants' motion for summary judgment was denied as to the cataract claim because it was not specifically addressed in the motion. (ECF Nos. 110, 112.)

1 Plaintiff has now filed a motion to voluntarily dismiss Dr. Kim Adamson because
2 Plaintiff believes Dr. Adamson acted reasonably, which the court recommends granting. (ECF
3 No. 144.)

4 Plaintiff has also filed a motion for judgment on the pleadings with respect to his cataract
5 treatment claim. (ECF No. 140.) Defendants oppose the motion on the basis that the motion is
6 untimely. (ECF No. 141.) Plaintiff then filed a motion for leave nunc pro tunc to file his motion
7 for judgment on the pleadings. (ECF No. 142.) He also filed a reply in support of his motion for
8 judgment on the pleadings. (ECF No. 143.)

9 On April 29, 2021, District Judge Jones ordered that the dispositive motions deadline
10 would be June 28, 2021. (ECF No. 95.) Plaintiff did not file a dispositive motion by that date.
11 Following the granting in part and denial in part of Defendants' motion for summary judgment, a
12 proposed joint pretrial order has been filed (ECF No. 133), and this case is set for a settlement
13 conference on April 5, 2023, to see whether the action can be settled prior to trial. Plaintiff's
14 motion for judgment on the pleadings, filed on January 19, 2023, *more than a year and a half*
15 *beyond the dispositive motions deadline*, is untimely. Plaintiff has not set forth good cause for
16 the failure to timely file his motion. Therefore, Plaintiff's motion for judgment on the pleadings
17 and his motion for leave nunc pro tunc to file the motion should be denied.

18 IT IS HEREBY RECOMMENDED that Plaintiff's motion (ECF No. 144) be
19 **GRANTED** and Dr. Adamson be **DISMISSED** from this action **WITH PREJUDICE**; and
20 Plaintiff's motion for judgment on the pleadings (ECF No. 140) and motion for leave nunc pro
21 tunc to file the motion for judgment on the pleadings (ECF No. 142) should be **DENIED**.

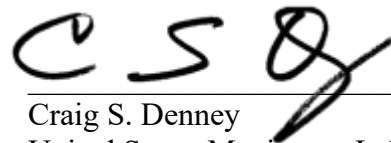
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1 The parties should be aware of the following:

2 1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
3 this Report and Recommendation within fourteen days of being served with a copy of the Report
4 and Recommendation. These objections should be titled “Objections to Magistrate Judge’s
5 Report and Recommendation” and should be accompanied by points and authorities for
6 consideration by the district judge.

7 2. That this Report and Recommendation is not an appealable order and that any notice of
8 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
9 until entry of judgment by the district court.

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11 Dated: March 14, 2023



Craig S. Denney
United States Magistrate Judge